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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
HENRY LUKAS et al) LATENT HEAT STORAGE DEVICE
Serial No. 09/678,990) Group Art Unit 3743
Filed October 4, 2000) Examiner Nahir B. Patel

PETITION TO THE COMMISSIONER

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED

JUN 05 2003

TECHNOLOGY CENTER R3700

Sir:

This Petition seeks a determination by the Commissioner that the election of species requirement set forth in the Office Action dated December 30, 2002 is improper and that the making of the same Final, after a traverse by the Applicants, in the Office Action dated April 9, 2003 is improper, and that the election requirement be withdrawn.

06/02/2003 HALI11 00000051 09678990

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37 CFR 1.8
CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 28, 2003.

Signature: _____

Karen Sanderson

Name: _____

Karen Sanderson

The election of species requirement sought an election by the Applicants of allegedly different species, one purportedly represented by Figs. 1 and 2, another purportedly represented by Figs. 3 and 4, and the third purportedly represented by Fig. 5. It is the Applicants' contention that each of these figures relates to a single disclosed embodiment and that only one species is disclosed as an exemplary embodiment.

At the outset, it is noted that Fig. 1 refers to a "somewhat schematic cross-sectional view of a latent heat storage device" (application, page 9, lines 8 and 9). Fig. 2 specifies that it is a fragmentary sectional view "taken at approximately 90° of Fig. 1" at one end thereof, making it clear that Fig. 2 and Fig. 1 relate to the same embodiment.

The drawing description of Fig. 3, at page 9, line 12, simply states it "is an exploded view of the latent heat storage device" (emphasis supplied). It is observed that this statement is a clear reference back to the latent heat storage device shown in Figs. 1 and 2; and that is made all the more apparent by the fact that Fig. 3 does not refer to it being a showing of a modified embodiment. That is, Fig. 3 shows the same embodiment as Figs. 1 and 2.

The Examiner agrees that Fig. 4 shows the same device as Fig. 3 making it clear that Fig. 4 belongs with Fig. 3, which in turn relates to what is shown in Figs. 1 and 2.

Fig. 5 states that it "is an enlarged, fragmentary view of the part of the tube matrix". Clearly, Fig. 5 is nothing more than an enlarged, fragmentary view of part of what can be gleaned from Figs. 3 and 4, simply showing the tubes 20 and how they relate to one wall of the salt case. It is in the case simply to make it clear what is shown in Figs. 3 and 4 by providing additional, enlarged detail of the structure shown in those figures.

It will be observed by reference to the claims, with the independent claims being in so-called Jepson-type form, that the invention relates the improvement wherein the tube runs are laid out in a polygonal pattern with each run inwardly of the tube matrix exterior abutting a plurality of adjacent runs and each run at the exterior of the matrix additionally engaging the salt jacket with provision for flow spaces existing between the runs. This detail is not readily apparent in Figs. 1 and 2 but is in each of Figs. 3, 4 and 5 which, of course, are more detailed views of what is shown in Figs. 1 and 2.

The entire specification can be read in its entirety and one will find no reference to the showing in any one of the figures as being to a different embodiment. The Applicants state on the record that but a single embodiment is disclosed and that should be enough to cause withdrawal of the restriction requirement.

The Examiner has attempted to justify the restriction requirement when he made it final by stating "Figures 1 and 2 have an additional tube run 21, and Figure 5 uses a baffle."

Looking at page 11, beginning at line 3, the specification states that in the preferred embodiment the matrix of tubes is shaped as a closely packed equilateral hexagon with an additional tube run in the center. That is to say, there are six tubes about the periphery of each equilateral hexagon making up the matrix and an additional tube run in the center of each of those six tubes. However, it is clear from a view of Figs. 3, 4 and 5 that each group of six tubes forming an equilateral hexagon also have the additional tube in the center of that hexagonal matrix so this does not distinguish Figs. 1 and 2 from what is shown in any of the other figures.

The Examiner also states "... Figure 5 uses a baffle."

First of all, Fig. 5 does not illustrate a baffle. But even if it did, a baffle is shown at 30 in Fig. 1 as well as Figs. 3 and 4. Thus, Fig. 5 is not distinguishable from the remaining figures as well.

Therefore, given (1) the description of the drawings all referring to a single embodiment and nowhere stating that any of the figures relate to a modified or additional embodiment; (2) the Applicants' statement on the record that but a single embodiment is disclosed; and (3) the Examiner's alleged differences between the various showings as giving rise to the presence of

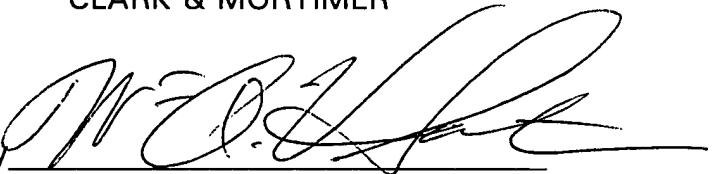
multiple species as completely erroneous, it is clear that there is no basis for the election requirement.

It is therefore urgently requested that the Examiner be directed to withdraw the election of species requirement and to act appropriately throughout the remainder of the prosecution herein. Notification to that effect is solicited.

Enclosed is a check in the amount of \$130.00 to cover the petition fee. Should additional fees be required in connection with this matter, please charge our Deposit Account No. 23-0785 the necessary amount.

Respectfully submitted,

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By 
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May 28, 2003

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